IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.53 OF 2005

Maruti Babasaheb Kalukhe & Ors. ...Appellants

Vs.

Jagdev Jotiba Saste (through heirs) ...Respondents

Mr.G.N.Salunkhe i/b V.S.Kokitkar for appellants

CORAM: A.S.OKA,J.
DATE : FEBRUARY 16, 2005.

P.C.:

1. The Appeal is preferred by the original Defendant Nos.2 and 2a. The Trial Court has passed a decree against the defendants/present Appellants directing them to hand over possession of Survey No.215/2A admeasuring 3 acres and 3 gunthas situated at village Asu, Taluka Phaltan District Satara in favour of the original Plaintiff.

2. Admittedly, Jagdev and Maruti were real brothers and they jointly purchased the land bearing Survey No.215/2-A. A suit was filed by Jagdev claiming partition and separate possession of one half share. The suit was instituted on 4th March 1974. The Defendants were served with the summonses on 26th March 1974. The present Appellants were parties to the suit because they were claiming on the basis of an agreement for sale. During the pendency of the suit on 27th May 1974 the sale deed was executed in favour of the Appellants.

3. The case of the Appellants was that in 1927 there was a

partition between Jagdev and Maruti. In the said partition, land bearing Survey No.215/2A was allotted to the share of Jagdev and the land bearing survey No.215/2B was allotted to the share of Maruti. Admittedly, the Appellants are claiming through Maruti. The defence of the Appellants was that from 1927 onwards Jagdev was not in possession of the suit land i.e. Survey No.215/2A the suit land was allotted to Maruti in Consolidation proceeding.

4. The learned Judge accepted the theory of partition pleaded by the Appellants. The learned Trial Judge negatived the plea of the Appellants that they are bonafide purchasers and proceeded to pass a decree for possession in respect of the suit land which even according to the Appellants was originally allotted to the original Plaintiff Jagdev in partition between Jagdev and Maruti. The decree of the trial Court for possession has been confirmed by the Appellate Court.

5. Shri Salunkhe for the Appellants submitted that the suit was filed for partition and separate possession and it was not a suit for possession on title. After accepting the defence of the Appellants that the partition had already taken place, the learned Trial Judge could not have passed a decree for possession of the land which was allotted to the share of the Plaintiff Jagdev in the partition. He submitted that the suit for partition could not have been treated as suit on title.

He submitted that the suit on title was barred by limitation and in any event in the Consolidation proceeding the suit property was allotted to Maruti.

6. I have considered the submissions. From the Judgment of the Appellate Court it appears that it was not argued before the Appellate Court that there was an ouster of Jagdeo. The Appellate court has considered the plea of adverse possession and has negatived the same. In so far as adverse possession is concerned, the title of Maruti could have been perfected provided it was established that Maruti was in hostile possession to the knowledge of the Plaintiff Jagdev. The Appellate Court has held on facts that ingredients of adverse possession have not been established by the Appellants.

7. In so far as plea based on proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is concerned, there is nothing on record to show that certificate under Section 24 of the said Act was issued in favour of Maruti in respect of the suit land so that Maruti could have claimed exclusive title.

8. When the Trial Court held that the original Plaintiff has established his exclusive title in respect of the suit property, the Trial Court passed a decree for possession. It is to be noted here that it was the case of the Appellants that in partition the suit land was allotted to the share of

Jagdev which was accepted by the Courts below. The suit filed by the original Plaintiff was essentially for claiming title in respect of one half share in the suit property. when the Trial Court found that the suit property was allotted to the Plaintiff representing his one half share , the Trial Court proceeded to pass decree for possession in favour of the Plaintiff. It is a settled position that the Civil Court while passing a decree can suitably mould the reliefs which are claimed.

9. I am of the view that no fault can be found with the findings of the Trial Court and the Appellate Court when Decree for possession was passed in favour of the Plaintiff after the original Plaintiff proved his exclusive title over the suit property. The Appellants have acquired the property during the pendency of the suit with the knowledge of the pendency of the suit. The Second Appeal is dismissed with no order as to costs.

10. At this stage Shri Salunkhe prays that ad-interim relief granted by this Court on 19th January 2005 be extended for a reasonable period.

11. Notwithstanding the dismissal of the Second Appeal ad-interim relief granted on 19th January 2005 will continue to operate for a period of eight weeks from today.

JUDGE.